

In re) Fair Hearing No. 20,395
)
Appeal of)

The petitioners appeal the decision of the Department for Children and Families, Health Access Eligibility Unit (HEAU) terminating their eligibility for VPharm benefits. The issue is whether the petitioners' income exceeds the program maximum.

1. The petitioners are a married couple with no dependent children. Following a review of their eligibility the Department sent a notice dated June 20, 2006 terminating their VPharm benefits.¹

2. There is no dispute that the petitioners' income includes wages one of them earns, Social Security benefits, and self-employment. The initial dispute in this matter

¹ Based on the petitioners' income the Department found them eligible for the Health Vermonter's Program, effective July 1, 2006. The petitioners have continued to be eligible for VPharm during the pendency of this appeal.

concerned whether certain losses reported by the petitioners on their self-employment could be deducted from their other sources of income.² There was also a dispute as to whether reported wages were year round or seasonal. The Department in its initial decision determined that the petitioners' countable income from all sources was \$3,374 per month. Following the petitioners' appeal in this matter the Department agreed to review their income based on additional information provided by the petitioners.

3. On October 3, 2006 the Department informed the petitioners that it had not changed its determination of their monthly income from wages and self-employment. In addition, the Department determined that effective September 2006 both petitioners were receiving Social Security benefits (whereas previously only one of them was), and that their combined income from Social Security alone was \$2,264.³ Inasmuch as the petitioners' combined income of \$4,674 (wages, self-employment, and Social Security) exceeded the program maximum of \$1,657 for a family of two persons, the Department affirmed its decision that the petitioners were no

² It appears that much of the loss reported by the petitioners on their taxes is for "depreciation".

longer eligible for VPharm. At a phone status conference held on October 17, 2006 the petitioners' attorney indicated that despite continuing disputes over the average amount of wages received over the course of the year and whether net losses from self-employment should be subtracted from other income, the petitioners could not dispute that their net income was in excess of the program maximum.

ORDER

The Department's decision is affirmed.

REASONS

Under the VPharm regulations, all unearned income and all earned income, except a \$90 disregard for each earner, is included as countable income for eligibility. Income from self-employment is determined by deducting business expenses from gross receipts. The regulations specifically provide that "depreciation" is not a countable business expense. Also, there is no provision in the regulations allowing the Department not to count income voluntarily "set aside" by a

³ The petitioners allege that one of their Social Security checks "goes directly into an account for their retirement and is not used for any current expense".

recipient for future use. W.A.M. §§ 3502.4 and 4001.81(a)-(e).

Based on the above regulations, and even considering only the *undisputed* facts in this matter, it must be concluded that as of the dates of their application and hearing the petitioners had countable income far in excess of the maximum for eligibility under the VPharm program for a two-person family, which is \$1,657. P-2420 B. Thus, the Department's decision finding the petitioners ineligible for VPharm based on their reported income must be affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

#